

REMARKS

In the Official Action, Claims 5, 7 and 11 were rejected under 35 U.S.C. 112 as being indefinite for reasons set forth in the Action. The claims have been amended for further clarity, by reciting only the water based adhesive emulsion, which category is understood to include latex emulsions, thereby to overcome the rejection under 35 U.S.C. 112.

Claims 18-20 were rejected under 35 U.S.C. 102 as being anticipated by Ellis (WO 01/98575) for reasons set forth in the Office Action. Claims 1, 6, and 14-17 were rejected under 35 U.S.C. 103 as being unpatentable over Ellis in view of Irwin (US 5,612,113), and claims 2-4, 8-10, 16, and 21-22 were rejected under 35 U.S.C. 103 as being unpatentable over the combined teachings of Ellis, Irwin, and Higgins (US 2002/0142126) for reasons set forth in the Office Action.

Claims 12, 13 and 23 were said to have allowable subject matter.

With respect to the rejections under 35 U.S.C. 102 and 103, the following argument is presented to distinguish the claimed subject matter from the teachings of the cited art, thereby to overcome the rejections, and to show the presence of allowable subject matter in the rejected claims.

The examiner relies on Ellis, who discloses backing layers located above a film that is liquid impermeable but vapor permeable, for rejection of the claims 18-20, and combines Ellis with Irwin for teaching that a backing layer may be located below the film for rejection of claims 1-4, 6, 8-10, 14-17 and 21-22.

Claim 18 is amended to recite both primary and secondary backing layers disposed on opposite sides of the membrane. This overcomes the rejection of claims 18-20 under 35 U.S.C. 102 since Ellis does not teach the presence of backing layers both above and below his film. Possibly, the examiner will consider a combination of the teachings of Ellis and Irwin for

rejection of amended claim 18, as is employed for rejection of claim 1.

Both of the independent claims 1 and 18 are amended to distinguish the present invention from the combined teachings of Ellis and Irwin. Claims 14 and 23 are amended to conform to the amended claims 1 and 18, respectively. It is urged that the amendments to claims 1 and 18 preclude a combination of the teachings of Ellis and Irwin to show a lack of patentability, and show that there can be no motivation to combine these two references for rejection of the claims.

Both of the independent claims 1 and 18 recite the feature of a primary backing layer and a secondary backing layer, wherein the secondary backing layer protects the membrane from abrasion. Furthermore, the secondary layer is said to be composed of breathable material disposed on a side of the membrane opposite the primary backing layer for allowing transport of water vapor through the carpet from a floor covered by the carpet while protecting the membrane from abrasion caused by contact of the carpet with the floor.

Ellis does not show, in his floor covering (carpet), a backing layer on the outside (or bottom) surface of his breathable film, which location of a backing layer would serve to protect the film from abrasion upon emplacement of the carpet on a floor. This location of the film is noted by the examiner at the bottom of Page 3 of the Action. The examiner then relies (Office Action, top of page 4) on the teaching of Irwin to provide a fluid impervious film (Irwin, col. 3 at line 5) as a laminate between the primary and the secondary backings of a carpet (Irwin, col. 4 at line 44) to show that the structure of Ellis is readily modified to place a protective backing layer on the bottom surface of the Ellis breathable film.

However, as noted above, the present claims, as amended, call for the feature wherein the carpet allows for transport of water vapor through the carpet from a floor covered by the carpet while protecting the membrane from abrasion caused by contact of the carpet with the floor. This teaching of the present invention is specifically contradicted by Irwin who teaches

(Abstract) a film of liquid impervious material. Nowhere does Irwin state that the film is breathable. In contrast Ellis teaches (Abstract) that his floor covering is vapor permeable. Since the present invention is directed to a breathable carpet, as is the Ellis carpet, while Irwin does not teach breathability, it is urged that there is no motivation to combine the teachings of Ellis with the teachings of Irwin so as to modify the structure of Ellis to provide for a protective secondary backing under the Ellis film. Also, it is noted that neither Ellis nor Irwin discuss the matter of protecting a film (breathable in the case of Ellis, not breathable in the case of Irwin) from abrasion.

It is urged that, since neither Ellis or Irwin discuss the matter of protection of a film or membrane from abrasion in the construction of a floor covering or carpet, and since the matter of protection of a membrane in a carpet from abrasion is specifically set forth in the present claims, neither the teachings of Ellis or Irwin, considered individually or in combination can show or suggest the membrane-protection feature of the present invention. Furthermore, since the breathable characteristic of the membrane of the present invention is specifically set forth in the claims, and since Ellis teaches breathability while Irwin does not teach breathability, there cannot be any motivation to combine their teachings.

With respect to those dependent claims reciting also the feature of the stabilizing layer (wherein a desirable form of stabilizing layer employing scrim is known from the Martz patent (US 5656167) as is disclosed on page 5 of the present specification), the citation by the examiner of the teachings of Higgins does not alter the foregoing argument against the combination of the teachings of Ellis and Irwin.

Thereby, this amendment of the claims and the argument are believed to overcome the rejections under 35 U.S.C. 102 and 103 so as to secure allowance of the rejected claims.

The foregoing amendment is believed to meet all the points raised by the Examiner so as to place the claims in condition for allowance. If any of the matters raised in the Action or

any further matters have not been adequately resolved by this amendment, a telephone interview between Applicant's representative and the Examiner is requested in order to resolve any such outstanding matters.

It is believed that all the claims are now in condition for allowance in that they patently distinguish over the art. Accordingly, a favorable response indicating such condition is earnestly solicited.

Respectfully submitted,

A handwritten signature in cursive script, reading "David M. Warren".

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